

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE

v

Emerald Green Clean LLC

DECISION OF THE HEARING OFFICER

Nature of Dispute: RSA 275:43 I unpaid wages
RSA 275:48 I illegal deductions

Employer: Emerald Green Clean LLC, 53 Ayers Rd, Newport, NH 03773

Date of Hearing: July 7, 2015

Case No.: 50360

BACKGROUND AND STATEMENT OF THE ISSUES

The claimant, through a consolidated hearing with one other former employee of the employer, asserts he is due \$2,170.00 as follows:

- \$1,845 in unpaid wages for time spent traveling in the employers van to and from home and the job site;
- \$300.00 in unpaid wages for time spent driving a carpool of employees in his own vehicle; and
- \$25.00 which the employer deducted from his wages for a deposit on a uniform shirt.

The employer denies the claimant is due any further wages. The employer allows employees to ride in the employer van as a courtesy and a benefit. It is not mandatory and employees are free to make their own way to work. They never asked the claimant to carpool for the employer's benefit. Any employees he took to work were of his own choosing. No deduction had been taken from the claimant's wages for a shirt deposit.

FINDINGS OF FACT

The claimant worked for the employer from approximately March 2014 through February 2015. His initial rate of pay was \$10.00 per hour, which increased to \$10.50 at some point during his tenure.

The claimant argues he spoke with an inspector from this Department who advised that "the moment he stepped into a company van" until he was dropped off was considered work time and he should be paid, regardless of whether or not it is mandatory to ride with the employer.

The claimant also argued he provided a carpool one night for the employer because the company van was having the logo painted on it. The site manager asked the claimant to provide transportation for the crew that night. The claimant also argued he drove the regular company van home from the last stop on seven or eight occasions. The claimant was unable to articulate dates or precise times of day these instances occurred.

The employer argued he provided a benefit to the claimant to ride in the employer's van, at no cost to the employee, and at the employee's choice. The claimant could have found his own ride to and from work. He did not ask the claimant to drive the night the company van was being painted, Darrin the site manager was instructed to drive his own van. The employer does not have any record of the claimant driving the company van in the mileage logs, nor was the claimant on the employer's insurance to drive the van.

Pursuant to 29 CFR 785.35, incorporated by reference at Lab 803.04, discusses travel time. 785.35 Home to work; ordinary situation. An employee who travels from home before his regular workday and returns to his home at the end of the workday is engaged in ordinary home to work travel which is a normal incident of employment. This is true whether he works at a fixed location or at different job sites. Normal travel from home to work is not worktime.

The employer provided an option for employee's to ride to work in a company van. The employer does not mandate this option and employees are free to find their own transportation.

The travel time spent riding in the employer's vehicle between home and the first stop and the last stop and home is not considered worktime.

The claimant did not provide persuasive evidence or testimony that he drove a carpool for the employer on one night as directed by the site manager, nor that he drove the company van home on seven or eight occasions.

Therefore, the Hearing Officer finds the claimant failed to prove by a preponderance of the evidence that he is due the claimed wages.

The claimant argues he is due \$25.00 for a uniform shirt deposit.

Both parties agree no deduction had been taken from the claimant's wages. The claimant also agreed he had not paid the employer \$25.00 directly.

As the claimant did not give the employer a \$25.00 deposit, no wages are found to be due.

DISCUSSION

The claimant has the burden of proof in these matters to provide proof by a preponderance of evidence that his assertions are true.

Pursuant to Lab 202.05 "Proof by a preponderance of evidence" means a demonstration by admissible evidence that a fact or legal conclusion is more probable than not.

The Hearing Officer finds the claimant failed to meet his burden in this claim.

DECISION

Based on the testimony and evidence presented, as RSA 275:43 I requires that an employer pay all wages due an employee, and as this Department finds that the claimant failed to prove by a preponderance of the evidence that he is owed the claimed wages, it is hereby ruled that this portion of the Wage Claim is invalid.

As this Department finds the claimant failed to prove by a preponderance of the evidence that he was not paid all wages due because the employer illegally deducted a deposit for a uniform shirt, it is hereby ruled that this portion of the Wage Claim is invalid.

Melissa J. Delorey
Hearing Officer

Date of Decision: July 9, 2015

MJD/kdc